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91-1843
No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

JAMES DAVIS NELSON, JR.

PETITIONER/APPELLANT

V.

UNIVERSITY OF ALABAMA SYSTEM, ET AL.

RESPONDANTS/APPELLEES

PETITION FOR WRIT FOR CERTIORARI FROM

SUPREME COURT OF ALABAMA

James Davis Nelson, Jr.

Pro Se

321 23rd Street

Tuscaloosa, Alabama 35401

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER A FINAL JUDGMENT OF THE SUPREME COURT OF ALABAMA, affirming the erroneous decision of the Circuit Court of Tuscaloosa County, Alabama, on issue of whether male former student of the University of Alabama had his due process rights violated under the 5th and 14th amendments to the U.S. Constitution when the University of Alabama failed to hear any academic grievances because of conspiracy of University of Alabama administrators and professors not following own grievance procedures and therefore, the civil rights of former nursing student were violated under 42 U.S.C §1983, i.e. gender discrimination?

II. WHETHER A FINAL JUDGMENT OF THE SUPREME COURT OF ALABAMA, affirming the erroneous decision of the Circuit Court of Tuscaloosa County, Alabama, in ignoring the substantial evidence in the instant case found in numerous

affidavits [3 affidavits by Nelson, Weiner, Patrick, and Prewitt, all of which are incorporated into this brief - see record below], which is a misinterpretation of the state "substantial evidence rule" [§12-21-12, Code of Alabama, 1975] as seen in Bass v. South Trust Bank Baldwin County, 538 So. 2d 794, (Ala. 1989), i.e. is a local state law on procedure impinging on the due process rights of Mr. Nelson to have his case heard in a trial in the Circuit Court of Tuscaloosa County, Alabama and this misinterpretation of law on substantial evidence and ignoring the actual substantial evidence in the record supported by the affidavits named above and other Exhibits, and therefore, Mr. Nelson's due process rights under the 5th and 14th Amendments to the U.S. Constitition were violated which triggers the 42 U.S.C. § 1983,

III. WHETHER THE SUPREME COURT OF ALABAMA made error when the University of Alabama

failed to show any prima facie evidence showing no genuine issue of material facts exists when the University of Alabama had been on notice after the filing of the first grievance not to lose the final exam of Mr. Nelson, and thus, again Mr. Nelson's due process rights to have a jury trial were impinged upon and thus violating Mr. Nelson's 5th and 14th Amendment rights to the U.S. Constitution?[1]

IV. Whether the Supreme Court of Alabama was in error in not ruling that Mr. Nelson's equal protection rights under the 14th Amendment to the U.S. Constitution were violated when female nursing students at the University of Alabama were allowed to make up exams and the male student nurse [Mr. Nelson] was not allowed to make up any exams, and the University of Alabama lost Mr. Nelson's final exam[2].

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[1] University of Alabama should not have

created records and deleted records after and after the lawsuit produces about 100 pages more of records, and University of Alabama violated own record policies on grievances as well as the University of Alabama did not produce care plans or any evidence of Mr. Nelson's deficiency.

[2]Mr. Nelson did not have any equal access to clinical bed lab. and Ms. Adams, asistant professor, could not grade Mr. Nelson fairly [see Dean Awtry affidavit where Ms. Adams did not evaluate Mr. Nelson according to University policy.

PARTIES TO THE PROCEEDING

James Davis Nelson, Jr., Petitioner
(Appellant and Plaintiff below)

The following parties were named in the original complaint as defendants: The University of Alabama System, and Trustees of the University of Alabama, Chairman, Hon. Governor Guy Hunt, Mr. Thomas Barlett, Former Chancellor, Mr. Sam Earl Hobbs, Interim Chancellor, The University of Alabama, Dr. Joab Thomas, Former President, Dr. Roger Sayers, Interim President, Dr. Douglas Jones, Vice-President Academic Affairs, Dr. Donald Crump, Assistant Vice-President, Mr. Kenneth Goodwin, Office of Counsel, Officially and Individually, Dr. Norma K. Mobley, Former Dean, Capstone College of Nursing, Officially and Individually, Dr. Janey Awtry, Dean, capstone College of Nursing, Ms. Janice Nelson, Course Leader Instructor, Officially and Individually, and Ms. Marsha Adams, Assistant Professor fo Nursing, Officially and Individually.

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JAMES DAVIS NELSON, JR.

PETITIONER/APPELLANT

V.

UNIVERSITY OF ALABAMA SYSTEM, ET AL.

RESPONDANTS/APPELLEES

PETITION FOR WRIT FOR CERTIORARI FROM SUPREME COURT OF ALABAMA

OPINIONS BELOW

The Petitioner/Appellant incorporates all of the statements in the Opinions below, and are stated in the Appendix of this Writ of Certiorari and incorporated as "Opinions below". The opinion of the Supreme Court of Alabama is dated January 24, 1992, and the Rehearing was denied on February 21, 1992, and the opinion is reprinted in the appendix.

JURISDICTION

The Judgment of the Supreme Court of Alabama, of which review and reversal are sought, has jurisdiction under title 28, United States Code, Section 1257 (3).

Constitutional Provisions involved are:

Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall... deprive any person of ... property without due process of law..."; nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall ... be deprived of life, liberty or property, without due process of law;"

STATEMENT OF THE CASE

The instant case is about a former male nursing student at the University of Alabama who was shown no due process after filing

numerous academic grievances and claims were based on 42 U.S.C. § 1983 because of lack of due process, denial of equal protection [gender discriminatin], and conspiracy of administrators not following own policies of academic grievances, and the trial court entered a summary judgment in favor of the defendants, ignoring the voluminous substantial evidence as shown in the affidavits [listed above and in the record], and the Supreme Court of Alabama affirmed not following law as seen in the Bass v. South Trust Bank Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). Writ of Certiorari should be granted, and Merits briefing allowed.

STATEMENT OF THE FACTS

The Petitioner incorporates all the facts below in the briefing to the Supreme Court of Alabama, and found in the affidavits of Mr. Nelson [3 affidavits], Mr. Mark Weiner,

Mr. Patrick, Mr. Prewitt, and other Exhibits and affidavits in the record below and is incorporated in to the facts]. A more detail statement of the facts will be made in the Merits Brief if the Writ of Certiorari is granted.

Mr. James Davis Nelson, Jr., was a male student nurse taking nursing courses in University of Alabama, Nur. 256, and Nur. 214 in the Spring of 1987. Mr. Nelson was a third year University of Alabama student and was permanently suspended by the alleged failing of the clinical part of Nur. 256. [Record below is Vol. II, p. 464].

In Nur. 256, Mr. Nelson had an assistant professor [Vol. II, 462] by name of Ms. Marsha Adams, a female RN nurse, who had a personality conflict with Mr. Nelson, a male student nurse. Mrs. Marsha Adams even fabricated the evaluation written after the fact since dated in 1988 [see Exhibit 13, dated 1/27/88 after

the fact especially the statement that was hearsay, and a fabrication for cover-up]. [Ms. Adams omitted teaching project with 100% --Nelson affidavit]. "During last clinical week, I received a complaint from Jim's client. He stated that he did not want to get Jim in trouble but that he did not know what he was doing"...[Vol.I, p.30, last evaluation], and this said document was clearly omitted by Mr. Goodwin, Attorney. Sept.14,1987, first grievance never was responded to by Ms. Adams, Ms. Janice Nelson, and Dean Mobley.[3]

The University of Alabama never produed the final exam of Nur.256, and claimed the final exam was lost, but University of Alabama never heard any academic grievances filed on administrative level, and all administrative effort was exhaused when Mr. Potts, Office of Counsel, failed to have any hearing and failed to follow University of Alabama policies on grievances, and Mr. Nelson's due process under the 5th and

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[3]Because of constant and continuance of the negligence of University of Alabama to abide by

14th Amendments to U.S. Constitution were violated, triggering 42 U.S.C. §1983 claims. The details of each grievance and mishandling by the University of Alabama will be stated in Merits Brief, if this Writ of Certiorari is granted and details can be found in Statement of Facts in the briefing to Supreme Court of Alabama. Dr. Crump, from Administrative Office of Academic affairs of University of Alabama, tricked Mr. Nelson into his office claiming he was to explain the grievance procedure, but had Mr. Goodwin, an University of Alabama counsel, to question Mr. Nelson without a lawyer about civil matters. See Patrick's affidavit [Vol. III, pp. 765-767]. [See Nelson affidavit p. 19]. [Records below]. Clearly, this questioning by a lawyer, Mr. Nelson, without notice of hearing of any grievance, was a violation of Mr. Nelon's due process. Mr. Goodwin showed decei

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University of Alabama grievance policy, and state policy provided by Commission of Higher Education, Mr. Nelson filed grievances against numerous University of Alabama personnel.

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when sent records claiming all of Mr. Nelson's records, but after lawsuit around 100 more pages.

Mr. Nelson was stigmatized by false documents being created in retaliation of his grievances, expecially the document created by Mr. Marsha Adams quoted above and found in the record [Vol. I, p. 30].

Because of the denial of due process by the University of Alabama, and the conspiracy of shifting which department was responsible for the due process, Mr. Nelson was permanently stigmatized. See Patrick and Wiener affidavits.

There is a disputable fact as to the element of stigmatizing precluding any summary judgment, and the Supreme Court of Alabama made error in not reversing and remanding the instant case based on the enormous subtantial evidence shown in the record of affidavits, exhibits and in the pleadings.

Clearly, the question of how Mr. Nelson failed, is a material issue in the instant case, since the grievances by Mr. Nelson are academic grievances filed according to

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the policies of the University of Alabama but not heard according to the policies of the University of Alabama, clearly showing no due process by the University of Alabama. At least there was a question as to whether there was a material disputable fact as to due process, and due process issue was allowed in the instant case [Vol. I, 195-196], and this Writ of Certiorari should be granted.

The University of Alabama[4] has failed to show the same equality in the Nursing School to Mr. Nelson, a male student nurse, as was extended to female nursing students who completed courses, and the female nursing students were allowed to make up deficiencies [p. 20, Janice Nelson deposition, lines 3-8, and p. 26 lines 3-19]. The University of Alabama in the nursing school failed to treat the males and female students the same under similar circumstances.

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[4]At no time and in no way nor form did the University of Alabama tell Mr. Nelson his grievances were not academic grievances.

Mr. Nelson, a male student nurse, was not allowed to make-up his final exam, and/or clinical part of Nur. 256, and Mr. Nelson was not allowed to take the NLN exam when he was unable at the time to take the exam, when two female nurses were allowed to make up deficiencies in the nursing school. This is clearly gender discrimination showed by the University of Alabama, and a violation of the equal protection under the law and the 14th Amendment to the U.S. Constitution, triggering the 42 U.S.C. §1983 claim. Mr. Nelson was not allowed the use of bed lab. Ms. Adams claimed Mr. Nelson tore up charts when he did not, and allowed Mr. Nelson to write nursing charts in clinical.

Clearly, the University of Alabama was acting under a common scheme and design conspiracy to do nothing when the University of Alabama kept shifing Mr. Nelson back and forth concerning his academic grievances filed at the University of Alabama when Mr. Nelson filed his grievances

according to policies of the University of Alabama, but the University of Alabama ignored own policies and ignored the Buckley amendment [Vol. IV., pp. 846-847, and p. 828, and exhibits sent with record].

The University of Alabama with all its agents who are defendants in this lawsuit as amended, have acted in concert, with common scheme and design in conspiracy to not provide due process for Mr. Nelson's grievances filed in the University of Alabama. The overt act and in this instant, overt non-act, of doing nothing to provide due process by the professors, dean, and academic administration of the University of Alabama have clearly violated the civil rights of Mr. Nelson under 42 U.S.C. § 1983 and stigmatized Mr. Nelson permanently in ever attending any university, and this Writ for Certiorari should be granted, and a Merits Brief allowed so that all the pertient facts may be presented with the law in argument.

REASONS FOR GRANTING THE WRIT

The first three Questions Presented above are concerned with "due process", and will be discussed together with due process law.

See Petitt v. Penn, 180 So. 2d 66, (LA, 1966) which defines "due process of law",

"Due process of law" means that no person shall be deprived of life, liberty, property or any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing." The University of Alabama had no hearing for the academic grievances filed by Mr. Nelson, and Mr. Nelson exhausted his academic remedies by finally seeing Mr. Potts, Office of Counsel, and Mr. Potts failed to have any hearing of Mr. Nelson's grievances thus, the University of Alabama clearly violated Mr. Nelson's right to due process of

law concerning his alleged failing of Nur. 256, when the University of Alabama lost his final Exam, and Ms. Adams not evaluationg Mr. Nelson by University of Alabama policy. See Van Sickle v. Boyes, 797 P. 2d 1267, Colo. 1990, which states,

"Administrative body has duty under due process clauses of State and Federal Constitution to be fundamentally fair in the resolution of a legal dispute between and individual and a governmental entity where the individual is threatened with deprivation of a significant property interest."

Also see Board of Regents v. Roth, 408 U.S. 564, 33 L. Ed 2d 548, 92 S. Ct 2701.

The University of Alabama is a state school and certain was acting under color of state law when no due process was given Mr. Nelson for his academic grievances. See Mathis v. Parks, 741 F. Supp. 567, E.D.N.C. 1990, which states,

"To prevail in civil rights action brought under § 1983, plaintiff must establish that defendants deprived him of rights secured by Constitution or laws of United States and that deprivation was committed by person acting under color of state law. 42 U.S.C. § 1983."

The Honorable judge of the lower trial court made reversible error because his denial of the summary judgment was due to alleged no substantial evidence, when the instant case had enormous substantial evidence as seen in the record and pointed out in the briefing to the Supreme Court of Alabama, and was also pointed out to the Honorable Judge of the lower court in the Motion to Alter, Amend... the judgment, which is in the record below.

The point is the University of Alabama has clearly violated Mr. Nelson's due process rights by showing no due process of academic grievances which have been pending for four (4) years.

The violation of Mr. Nelson's due process under the 5th and 14th Amendments to U.S. Constitution triggers the violation of civil rights under 42 U.S.C. § 1983.

See Clemons v. Daugherty County, Georgia, 684 F.2d 1365 (11th Cir. 1982), which precludes summary jdugment when the element of stigmatizin is at issue. Clearly, Mr. Nelson has been stigma tized in University of Alabama record when he has been suspended with an F in Nur. 256 and University of Alabama cannot find the final examp which is necessary document to prove any grade. Also, see Buxton v. City of Plant City, Fla. 871 F. 2d 1037, (11th Cir. 1989).

The point is that the keeping of stigmatizing false evaluation records that were fabricated after the fact [Vol. I, p. 30], in Mr. Nelson's student files is publication since a public school, especially since no due process has been shown to Mr. Nelson, and clearly the re-

cord shows that Mr. Nelson was not given due process at the University of Alabama, and at least this issue of due process is disputable which would make the order on summary judgment error as a matter of law.

Further, there is a question whether the courts interpretation or misinterpretation of the "substantial evidence rule"]§12-21-12, Code of Alabama, 1975] as seen in the Bass v. South Trust Bank Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989), and West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989) is impinging on Mr. Nelson's constitutional rights of due process in the courts.

See Morin v. Cleveland Metropolitan General Hospital school of Nursing, 516 N.E. 2d 1257 (Ohio App. 1986), which held that a student may not be dismissed arbitrarily by University without due process of law. Therefore, this Writ of Certiorari should be granted.

The Federal courts have said that under the Fifth Amendment to United States Constitution rights incident to ownership cannot

be divested by actions of the United States without due process of law. Northern Cheyenne Tribe v. Northern Cheyenne, 505 F. 2d 268, (9th Cir. 1974). Also see Southwestern Petroleum Corp. v. Udall, 361 F. 2d 650 (10th Cir. 1966).

See Seibold v. Daniels, 337 F. Supp. 210 (U.S, Dist. Court, M.D. Ala., 1972), held,

"A state statute cannot be construed to obviate a constitutional requirement."

See Owens v. Okure, 57 LW 4065 at 4069 which states,

"...Civil Rights Acts provided: "[a] unique remedy making it appropriate to accord the statute a 'a sweep as broad as its language'. Because the § 1983 remedy is one that can "override certain kinds of state law,", Monroe v. Pape, 365 U.S. 167, 173 (1961), and is in all events, supplementary to any remedy any State might have."... Emphasis added.

See Susan "M" v. New York Law School, 544 N.Y.S. 2d 829 (A.D.1 Dept., 1989), which states,

"If school exercises, its discretion to dismiss student for academic reasons in arbitrary or irrational fashion, the courts will intervene." (Emphasis added.)

See Davis v. Alabama State University, 613 F. Supp. 134, D.C. Ala. 1985, which held that essence of due process is notice and opportunity for hearing appropriate to nature of case.

In answer to the #4 Questions presented, in particular concerning equal protection of the law under the 14th Amendment to the U.S. Constitution, see Christensen v. Los Angeles County Bureau of Adoptions, 59 Cal. Reptr. 323, (Court of Appeal, Second District, 1967), which held that "Equal protection" clause of Federal Constitution requires that persons under like circumstances be given equal protection in the enjoyment of personal rights

and the prevention and redress of wrongs.

Christensen case further states,

"The "equality" guaranteed by the equal protection clause of the Federal Constitution is equality under the same conditions and among persons similarly situated."

University of Alabama has failed to show the same equality in the Nursing School to Mr. Nelson as extended to female nursing students allowed to make up exams and courses as stated above and not being treated the same and not having equal use of bed lab.

By the conspiracy of agents of the University listed as defendants in the instant case, Mr. Nelson has been permanently stigmatized in ever attending any university. See Gaines v. Malone, So. 2d 870 (Ala. 1943), which states, "A conspiracy" is a combination of two or more persons by concerted action to acomplish an unlawful purpose or to accomplish some purpose not in itself unlawful by unlawful means."

As to determining what facts are material, see Johnson v. Soulis, 512 P. 2d 867, (Wyoming, 1975) and Austin v. Wilder, 215 S.E. 2d 794 (N. Carolina, 1975).

See Thomas v. Principal Fin. Group, 566 So. 2d 735, (Ala. 1991), which defines substantial evidence "of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved."

See Bradley v. Pittsburgh Bd. of Education, 913 F. 2d 1064, [U.S. Court of Appeals, 3rd Cir., 1990], which held,

"Party has been denied full and fair opportunity to litigate only when state procedures fall below minimum requirements of due process as defined by federal law U.S.C.A. Const. Amend. 14."

See Mason v. Board of Educ. School Dist. no. 209, 741 F. Supp. 879, [U.S. District Court, D. Kansas, 1990], which held,

"Whether property interest has been conferred is generally question of state law, while what minimum procedural requirements must be followwed before that interest is adversely affected is question of constitutional law. U.S.C.A. Const. Amends. 5,14,"

The Supreme Court of Alabama has failed to follow on law on the elements of summary judgment because the Plaintiff/Petitioner has clearly shown that there are disputed material facts which meet the substantial evidence rule [§12-21-12, Code of Alabama, 1975], which is supposed to be read in connection with Rule 56, Alabama Rules of Civil Procedure. However, in the instant case the state highest court has misinterpreted the facts which are substantial facts, and the highest court of the state has failed to rule according to own law on summary judgment.

See Pruitt v. Elliott, 460 So. 2d 1275, (Ala.

1984), and Booth v. United Services Auto Association, 469 So. 2d 1281 (Ala. 1985).

See Jackson v. Mowery, 743 F. Supp. 600, (N.D.Inc., 1990), which held,

"Pro se motions and complaints are held to less stringent pleading requirements; rigor in examination of such motions and complaints is inappropriate."

The lower trial court clearly made reversible error in granting summary judgment because of enormous substantial evidence. Then, the Supreme Court of Alabama made reversible error by not following own law on summary judgment. See law on summary judgment presented in this Writ of Certiorari in the Booth case, and also see Byrd v. Leach, 226 So. 2d 866, which held,

"Burden of proving absence of material facts so that no genuine issue is left for jury determination is on movant for summary judgment,

and if evidence by affidavits, deposition or otherwise demonstrates the existence of a genuine issue summary judgment should be denied."

Also see Posey v. Posey, 545 So. 2d 1329 (Ala. 1989).

The instant case should have been decided by a jury because of the enormous substantial evidence which the trial court and the Supreme Court of Alabama failed to notice in the record. See Ikpeazu v. University of Nebraska, 775 F. 2d 250,253 (8th Cir. 1985), which held "In cases involving academic dismisal educational institutuions have the right to receive summary judgment unless there is evidence from which a jury could conclude that there was no rational basis for the decision or that it was motivated by bad faith or ill will unrelated to academic performance." In the instant case, Ms. Adams had a personality conflict with the male nursing student, Mr. Nelson, and even created false evaluation after the fact as quoted above. Clearly, this instant case should have been before a jury,

and it is reversible error to have granted a summary judgment. The Supreme Court of Alabama failed to follow own law on summary judgment by afirming the instant case. This Writ of Certiorari should be granted, and the merits brief allowed to be written.

See New York State Ass'n for Retarded Children v. Carey, 612 F. 2d 644 (1979), which held, "In reviewing factual determinations of state and local administrative agencies, courts have the sensitive task to insure that established legal standards, both constitutional and statutory, are followed by the agencies."

There is clearly a factualy material issue concerning due process rights under the 5th and 14th Amendments to the U.S. Constitutuion. See McGhee v. Mid-State Homes, 504 So. 2d 279 (Ala. 1987), which held

"Where there were factual issues to be determined, summary judgment was improper."

CONCLUSION

The Writ for Certiorari should be granted as stated above, and the Merits Brief allowed to be written so that this Honorable Court can rule on the merits of this instant case in which the due process of Mr. Nelson has been violated by the University of Alabama, and the Supreme Court of Alabama has not ruled according to its own law on summary judgment.

The instant case should be reversed and remanded to the lower trial court for trial by jury on the issues of due process, equal protection under the law, and conspiracy and other issues listed in the Amended Complaint.

Because there are disputable substantial facts as to due process [no due process by University of Alabama], equal protection under the law, conspiracy, and fabrication

of records, and lack of records such as non-production of final exam since University of Alabama claimed lost Mr. Nelson's final exam, and any one of these issues with material facts as described above is a reason to grant this Writ of Certiorari, i.e. University of Alabama deleted and created records.

Respectively submitted,

James Davis Nelson, Jr.

Pro Se

321 23rd Street

Tuscaloosa, Alabama 35401

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Writ of Certiorari was sent to Mr. George Gordon, Office of Counsel, The University of Alabama, P.O. Box 870106, Tuscaloosa, Alabama 35487 this 15 day of May 1992.

James Davis Nelson Jr.

APPENDIX A

SUPREME COURT OF ALABAMA

October Term, 1991-92

(Case no.)1901633

James Davis Nelson, Jr.

v.

University of Alabama System, et al.

Appeal from Tuscaloosa Circuit Court,

(CV-89-409)

SHORES, JUSTICE.

A former nursing student, James Davis Nelson, Jr., filed this action against the University of Alabama and seversl of its faculty members and administrators on April 26, 1989.[1] His suit sought monetary damages, reinstatement

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[1] The plaintiff's complaint lists as defendants: "The University of Alabama System, Trustees of the University of Alabama System, and Trustees of the University of Alabama, Chairman, Hon. Governor Guy Hunt, Mr. Thomas Bar[t]lett, Former Chancellor, Mr. Sam Earl

in the University, and damages basec on 42 U.S.C. § 1983 claims of denial of due process, denial of equal protection (gender discrimination), and conspiracy. The trial judge entered a summary judgment in favor of the defendants. Nelson Appealed. We affirm.

The record reflects that James Davis Nelson, Jr. entered the University in the

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Hobbs, Interim Chancellor, The University of Alabama, Dr. Joab Thomas, Former President, Dr. Roger Sayers, Interim President, Dr. Douglas Jones, Vice President Academic Affairs, Dr. Donald Crump, Assistant Vice-President, Mr. Kenneth Goodwin, Office of Counsel, Officially and Indivisually, Dr. Norma K. Mobley, Former Dean, capstone College of Nursing, Officially and Individually, Dr. Janet Awtry, Dean, Capstone College of Nursing, Ms. Janice Nelson, Course Leader Instructor, Officially and Individually, and Ms. Marsha Adams, Assistant Professor of Nursing, Officially and Individually."

fall of 1986 semester to pursue a course in nursing. Because of poor grades, he was placed on indefinite academic suspension at the end of the fall semester. However, the University waived his suspension and allowed him to enroll in the nursing courses for the 1987 spring semester. He enrolled in the courses--Nursing 214, "Medication Calculations"; and Nursing 256, "Nursing Process." At issue in his performance in Nursing 256, a course that requires the student to obtain a satisfactory evaluation in the clinical part of the course and to sit for the National League of Nursing Achievement Test. As a consequence of his poor academic performance during the spring semester, he was again placed upon indefinite academic suspension.

Following this supension, Nelson complained to Dean Mobley and Associate Dean Awtrey that the reason for his failure was incompetence on the part of his professors. They advised

him that he could file an academic grievance under the University academic grievance procedure. On September 14, 1987, Nelson met with Dean Mobley and gave her a written complaint in which he asked that the University fire two professors. However, Nelson did not submit a written academic grievance about his grades until December 9, 1987. The record reflects that a series of meetings and discovery procedures followed. During this period, Nelson made repeated demands for a delay in the grievance procedure. Nelson filed this action on April 26, 1989.

The court heard motions for summary judgment by both the plaintiff and the defendants. The judge entered a summary judgment for the defendants, stating in his order:

"This cause came to be heard on February 19, 1991, on plaintiff's motion for summary judgment and defendant's motion for summary judgment. After reviewing all evidence

submitted and arguments and briefs of counsel, this court finds that although there are disputed facts, there is no evidence of disputed material facts. Defendants have presented substantial evidence rebutting plaintiff's claims, and the plaintiff has presented no substantial evidence in support of his claims of denial of due process, denial of equal protection (gender discrimination), and civil conspiracy. Therefore all defendants are entitled to a summary judgment as to all claims as a matter of law, and it is ordered that summary judgment be granted in favor of all defendants as to all of plaintiff's claims. In so ordering, this court is making no ruling as to the merits of plaintiff's grievances, which have been filed against various officials of the University of Alabama, since those matters are not before this court, and are not ripe for review by a Circuit Court. Those grievances are

still pending, and the parties are encouraged to resolve those grievances promptly without further delay.

"Costs of this action are taxed to the plaintiff for which let execution issue.

"Ordered this 21st day of February, 1991."

The issue before us is whether the trial court erred in entering the summary judgment for the defendants. Rule 56, A. R. Civ. P., sets forth a two-tiered standard for determining whether to enter a summary judgment. In order to enter a summary judgment, the trial court must determine: 1) that there is no genuine issue of material fact, and 2) that the moving party is entitled to a judgment as a matter of law. In determining whether a summary judgment was properly entered, the reviewing court must view the evidence in a light most favorable to the nonmovant. See Turner v. Systems Fuel, Inc., 475 So. 2d 539, 541 (Ala. 1985); Ryan v. Charles

Townsend Ford, Inc., 409 So. 2d 784 (Ala. 1981). Rule 56 is read in conjunction with the "substantial evidence rule" (§12-21-12 Code 1975), for actions filed after June 11, 1987. See Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). In order to defeat a properly supported motion for summary judgment, the plaintiff must present "substantial evidence," i.e., "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989).

We have carefully examined the record in this case and conclude that the judgment of the trail court should be affirmed. The record in this case is lengthy, running to five volumes; yet there is much

extraneous matter and the trial court correctly concluded that although there a disputed material facts.

Nelson first contends that the defendar denied him due process and discriminated against him because of his gender. There is simply no evidence to substantiate thi claim. In fact, the evidence reflects tha Nelson himself requested that the academi grievance procedures be halted, and he no claims the halt to be a denial of due pro cess to him.

Nelson further claims that the defendar conspired to deny him a hearing on his academic grievances. He presented no evidence to support this claim. A civil conspiracy requires a combination of two or more individuals to accomplish an unlawful purpose or to accomplish a lawful end by unlawful means. Barber v. Stephen son, 260 Ala. 151, 69 So.2d 251 (1953);

Edison v. Olin Corp., 527.2d 1283, 1285 (Ala. 1988). While it appears that Nelson's contention is that University officials conspired to shift his grievances among themselves and thus to deny him due process, the record reflects that any shifting of Nelson's own actions. He has thus failed to show a wrong committed upon which a claim of civil conspiracy could be based.

On a motion for summary judgment, when the movant makes a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law, as in the present case, the burden shifts to the nonmovant to show "substantial evidence" in support of his position. Bean v. Craig, 557 So.2d 1249, 1252 (Ala. 1990). The record reflects that, as to each claim, Nelson failed to produce substantial evidence to establish a genuine issue of material fact. A summary judgment motion

is not defeated by conclusory allegations or speculation that fact issues exist, and bare argument or conjecture will not satisfy the nonmoving party's burden to offer facts to defeat the motion. Williams v. Palmer, 277 Ala. 188, 168 So. 2d 220 (1964); Riggs v. Bell, 564 So 2d 882, 884 (Ala. 1990). Therefore, the judgment of the trial court is due to be affirmed.

AFFIRMED.

Hornsby, C. J., and Maddox, Houston, and Kennedy, JJ., concur.

APPENDIX B

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY

JAMES DAVIS NELSON, JR.

PLAINTIFF

V.

UNIVERSITY OF ALABAMA SYSTEMS, ET AL.

DEFENDANTS

1901633

Application for rehearing overruled. No opinion written on rehearing.

Shores, J. - Hornsby, CJ., Maddox, Houston and Kennedy, JJ., concuc.

2/21/92

s/ Robert G. Esdale

Robert G. Esdale, Clerk

Supreme Court of Alabama

APPENDIX C

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY

JAMES DAVIS NELSON, JR.

PLAINTIFF

V.

UNIVERSITY OF ALABAMA SYSTEMS, ET AL.

DEFENDANTS

CASE NO. CV 89 409

ORDER

"This cause came to be heard on February 19, 1991, on plaintiff's motion for summary judgment and defendant's motion for summary judgment. After reviewing all evidence

submitted and arguments and briefs of counsel, this court finds that although there are disputed facts, there is no evidence of disputed material facts. Defendants have presented substantial evidence rebutting plaintiff's claims, and the plaintiff has presented no substantial evidence in support of his claims of denial of due process, denial of equal protection (gender discrimination), and civil conspiracy. Therefore all defendants are entitled to a summary judgment as to all claims as a matter of law, and it is ordered that summary judgment be granted in favor of all defendants as to all of plaintiff's claims. In so ordering, this court is making no ruling as to the merits of plaintiff's grievances, which have been filed against various officials of the University of Alabama, since those matters are not before this court, and are not ripe for review by a Circuit Court. Those grievances are

still pending, and the parties are encouraged to resolve those grievances promptly without further delay.

"Costs of this action are taxed to the plaintiff for which let execution issue.

"Ordered this 21st day of February, 1991."

s/s Thomas S. Wilson

Circuit Judge